

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Wisconsin Public Service Corporation	Project Nos. 2525-057, 2546-075, 2560-058, 2522-079, and 2595-080
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ORDER DENYING REHEARING

(Issued November 13, 2003)

1. The River Alliance of Wisconsin has filed a request for rehearing of the Commission's September 15, 2003 Order authorizing Wisconsin Public Service Corporation (Public Service) to remove some 9,700 acres from the project boundaries for its Caldron Falls Project No. 2525, High Falls Project No. 2595, Johnson Falls Project No. 2522, Sandstone Rapids Project No. 2546, and Potato Rapids Project No. 2560 (collectively, the Peshtigo Projects). 104 FERC ¶ 61,295. For the reasons discussed below, we deny rehearing.

**BACKGROUND**

2. On June 17, 2002, Public Service filed with the Commission an application seeking authorization to amend the project boundaries of the Peshtigo Projects to remove 9,738 acres of land, of which the licensee was conveying to the State of Wisconsin 174 acres for inclusion in a state park and 9,175 acres for inclusion in a state forest. The remaining 389 acres were to be earmarked for private development.

3. On September 15, 2003, the Commission issued an order modifying and granting Public Service's application. We stated that "[a]ny application to remove lands from a project boundary will be approved only if the Commission determines that the land is no longer necessary or appropriate for project purposes; that is, that all project purposes will continue to be satisfied in the absence of the lands at issue." *Id.* at P 18. In this case, we stated, "the environmental analysis performed by Commission staff demonstrates that removing the lands in question from the project boundaries will not significantly affect the ability of the projects to meet their purposes, including power production, recreation, protection of historic properties, and management of the environment." *Id.* at P 29. However, we required Public Service to retain within the project boundaries a 200-foot buffer zone along the project reservoirs and adjacent to shoreline recreation areas, in

order to ensure the adequate protection of soils, water quality, fishery and terrestrial resources and public recreation access to the project reservoirs. Id. at P 30. We also required Public Service to retain within the project boundaries all shoreline public recreation facilities. Id. at P 33.

4. On October 14, 2003, River Alliance filed a timely request for rehearing.<sup>1</sup> River Alliance focuses solely on the 389 acres that would be available for private development, arguing that that acreage is needed for project purposes, and that removal of those lands violates the project licenses.

## **DISCUSSION**

5. River Alliance contends that removal from the project boundaries of the 389 acres violates the project licenses because the acreage is necessary to carry out the Comprehensive Land Management and Wildlife Plans (Comprehensive Plans) and Recreation Plans approved by the Commission for the projects. In support of this proposition, River Alliance quotes the projects' Recreation Plans to the effect that "[a]ll [Public Service] owned property within the project boundaries, with the exception of the immediate vicinity of the project facilities, is open to the public for hunting or other recreation activities," and states that most of the lands proposed by Public Service for private development were categorized as forest management lands under the Comprehensive Plans. According to River Alliance, removing the lands in question from the project boundaries would be inconsistent with the plans.

6. River Alliance misapprehends the purpose of the Comprehensive and Recreation Plans. Those plans do not themselves determine or control which lands are necessary to carry out project purposes. Rather, the plans establish management methods for those lands that the Commission has otherwise determined will be included within the project boundaries. As discussed above, in this case we concluded based on the record, including the environmental assessment conducted by Commission staff, that -- with the exception of the buffer zone and shoreline recreation facilities -- the lands Public Service proposed to remove from the project boundaries, including the 389 acres slated for possible development, are not necessary for any project purpose. River Alliance does not attack this finding or the basis for it, nor does it make any showing, other than its general references to the Comprehensive and Recreation Plans, of any unique characteristics of

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<sup>1</sup>River Alliance also filed a motion to intervene. On October 29, 2003, Public Service filed an answer opposing the motion. In the September 15, 2003 Order, we granted River Alliance's motions to intervene in these proceedings. There is therefore no need for River Alliance to intervene again.

the 389 acres how their removal from the project boundaries will detract from any project purpose.

7. River Alliance also expresses concern that Public Service can limit the public's access to the buffer zone along the 389 acres by allowing landowners to build private docks and piers. According to River Alliance, if 100 lots are developed, each with a pier or boat dock, anglers would be barred from 10,000 feet of shoreline.<sup>2</sup>

8. Public Service's ability to permit the construction of private facilities in the buffer zone has not changed as a result of the September 15, 2003 Order. Such authority remains subject to the terms of the Comprehensive Plan, the standard land use article,<sup>3</sup> and any other applicable portions of the project licenses. In any event, even accepting River Alliance's suggestion that some 10,000 feet of shoreline could become off-limits to anglers,<sup>4</sup> there would still be some 115,000 feet of shoreline available to anglers at the High Falls, Johnson Falls, and Sandstone Rapids impoundments, where the lands slated for development are located. Moreover, the public would still have access to the project shoreline at issue by water and via on-shore recreation points.<sup>5</sup> Each of the affected reservoirs will continue to have existing public access points, some of which are located immediately adjacent to the proposed development sites: at the High Falls Project, where the majority of the development lands are located, there is a public boat landing immediately adjacent to a development site, and there are seven other boat access sites around the reservoir, from which the public will have access to the buffer zone; at the Sandstone Rapids Project, there is a canoe launch and parking area located adjacent to a proposed development site, and there is another boating access site on the reservoir.

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<sup>2</sup>The project licenses provide that angling shall not be permitted within 100 feet of a dock or pier.

<sup>3</sup>See, e.g., Article 416 of the license for Project No. 2525, 79 FERC ¶ 62,219 at 64,686-88 (1997).

<sup>4</sup>While angling will be constrained by the presence of docks and piers (see n. 2, above), the public may still access the shoreland for other recreational uses, such as picnicking, hiking, bird-watching, and the like.

<sup>5</sup>There is nothing in the record to show, and River Alliance does not allege, that the shoreline along the 389 acres is currently used by the public as key access points, as opposed to the recreation facilities already in place at the projects.

At the Johnson Falls Reservoir, there are a boat access site and a carry-in boat access site on the reservoir. Thus, granting Public Service's application will not significantly affect public access to project lands and waters.

The Commission orders:

The request for rehearing filed by the River Alliance of Wisconsin on October 14, 2003, is denied.

By the Commission.

( S E A L )

Magalie R. Salas  
Secretary